

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	16-CR-614(DLI)
	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	Wednesday, October 25, 2017
DAN ZHONG,	:	
	:	
Defendant.	:	

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TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE DORA L. IRIZARRY
UNITED STATES CHIEF DISTRICT JUDGE

A P P E A R A N C E S:

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1 COURTROOM DEPUTY: Criminal cause for status
2 conference, docket 16-CR-614, United States versus Dan Zhong.
3 State appearances.

4 MR. PRAVDA: Good morning Your Honor, Doug Pravda,
5 Ian Richardson and Nick Moscow for the United States.

6 We are joined today by Elizabeth Macchiaverna, who
7 is with the taint team. I also note the presence Your Honor
8 in the courtroom, of the Court Information Security Officer,
9 Harry Rucker.

10 THE COURT: Good morning to all of you.

11 For the defense?

12 MR. CLEARY: Good morning Your Honor, Robert Cleary
13 for Mr. Zhong. He is here in the courtroom with a Mandarin
14 interpreter.

15 Also appearing with me is Dietrich Snell and on my
16 far right, Brittany Benavidez.

17 THE COURT: Good morning to all of you.

18 May we have the name please of the Mandarin language
19 interpreter.

20 INTERPRETER: John Law, L-A-U.

21 THE COURT: Good morning.

22 Can you administer the oath, please, to Mr. Lau.

23 (Interpreter sworn by the Courtroom Deputy.)

24 THE COURT: Thank you.

25 This matter is on for status conference as well as

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1 for some limited oral argument on the defendant's motion for a
2 bill of particulars. The Government has also made a motion
3 for a protective order, the two are somewhat interrelated.

4 I assume that the parties have had a chance to see
5 the summary order that I issued in connection with the
6 defendant's motion for a bill of particulars, and if you have,
7 you will note that the Court granted the defendant's motion in
8 part, to the extent that the Government is directed to
9 identify false statements in the visa applications, and denied
10 as to specific acts underlying the charged conduct.

11 The Court reserved decision pending today's
12 conference with respect to that prong of the motion that
13 requested identification of victims.

14 So, just to start with, and we're probably going to
15 go back and forth on this. I just wanted to clarify, does the
16 defendant have-- has the defendant received the names of all
17 250 workers involved here or not?

18 MR. CLEARY: I believe, Your Honor, I will confirm
19 this with my colleagues, that we have visa applications for
20 250 workers, correct?

21 MS. BENAVIDEZ: Yes.

22 MR. CLEARY: That would give us those names.

23 We understand from the Government's filing that
24 there are more workers than the 250 reflected in those
25 applications. Indeed, in some of the discovery squabbles that

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1 we are trying to resolve without the Court-- without bothering
2 the Court, we have been trying to get the Government to
3 produce the other visa applications. They have not done that
4 yet. We are not arguing that to the Court today. But in the
5 course of those discussions, I have come to understand that
6 there could be a substantial number of additional applications
7 and hence additional workers.

8 THE COURT: What is a substantial number? What does
9 that mean?

10 MR. PRAVDA: Your Honor, the Government's
11 understanding right now is that there maybe an additional
12 fifty or so visa applications, in addition to the 250 or so,
13 that we have already provided.

14 There are some-- there are a small handful, within
15 the 250 that the defendant identified to us, that they could
16 not find in the discovery and we are going back and we are
17 either confirming whether or not they are there. If they are
18 not there, we will be providing it.

19 THE COURT: So, you are talking about-- two
20 different things here.

21 So, according-- there are an additional
22 approximately fifty names?

23 MR. PRAVDA: That's correct.

24 THE COURT: Visa applications that the Government
25 has not yet turned over.

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1 MR. PRAVDA: That's correct.

2 THE COURT: And, the defense is saying that they are
3 missing within the 250, that the Government previously
4 disclosed, that the defense is missing some visa applications
5 for those.

6 MR. PRAVDA: That's correct. I believe it is
7 probably about ten to fifteen.

8 THE COURT: About ten to fifteen, okay.

9 MR. CLEARY: Your Honor, the only other piece to the
10 equation is whether there are other workers that came over for
11 which the Government does not have visa applications. I don't
12 know the answer to that question. That would increase the
13 number of workers if that is the case.

14 THE COURT: Is there such a category?

15 MR. RICHARDSON: Your Honor, if I may.

16 THE COURT: Yes.

17 MR. RICHARDSON: What we are going to be-- what we
18 have been doing, and what we are going to be doing is
19 producing all of the visa applications for all of the
20 construction businesses, workers, who are brought into the
21 United States on A2 or G2 visas. That should define the outer
22 scope of the workers at issue in this case.

23 That is about three hundred, Your Honor, that is the
24 total, that is the largest set we are talking about here.

25 MR. CLEARY: Your Honor, that is not consistent-- I

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1 will wait until the Court finishes writing.

2 THE COURT: You don't have to, I have ears. My
3 hands work independently of my ears.

4 MR. CLEARY: Multitasking.

5 THE COURT: I got trained in State Court.

6 MR. CLEARY: What the Government just said is not
7 consistent with my understanding. My understanding maybe
8 mistaken.

9 But, I was under the impression that there were
10 other workers that came over not on A2 or G2 visas, but came
11 over on different visas. The Government can tell me if I am
12 wrong about that or if they can confirm that I am right, those
13 are applications also. Those are more workers.

14 THE COURT: How is the Government going to address
15 that?

16 MR. RICHARDSON: Your Honor, I'm not clear what
17 defense counsel is referring to.

18 THE COURT: I'm not either. That is why I would
19 figure that you know what your discovery is and what your
20 world of workers consist of.

21 MR. RICHARDSON: We do, Your Honor.

22 In our world of workers is A2 or G2 visa holders
23 brought to the United States to perform construction work on
24 Chinese governmental facilities. If workers came on other
25 status and the defense is aware of those workers, we request

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1 reciprocal discovery.

2 THE COURT: Do you have a reciprocal discovery
3 demand now?

4 Is the Government alleging that all of these, let's
5 say, three hundred workers, approximately, that consist--
6 comprise the universe of workers, are they all victims of the
7 alleged forced labor conspiracy?

8 MR. RICHARDSON: Your Honor, I would say, in some
9 subset. I think the theory that is articulated both in the
10 indictment and in the Complaint is that as a condition of
11 their employment and coming to the United States, they were
12 all required to sign the debt bondage contracts that are
13 referred to in the Complaint.

14 We have quoted -- or some variation, in sum and
15 substance, they are essentially the same requirement in each
16 debt bondage contract. So, depending how you look at it, yes,
17 they have all been victimized in some way or another.

18 The indictment confines the time period that we are
19 looking at, to January 2010 to November 2016. So some of the
20 workers --

21 THE COURT: To January 2016?

22 MR. RICHARDSON: I'm sorry, I believe November 2016.

23 THE COURT: Okay.

24 MR. RICHARDSON: So, the visa applications that
25 we're producing to the defendant, come-- some of them come

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1 before that time period. Some of these workers for example
2 came to the United States multiple times under multiple visa
3 applications that were-- visas issued by the State Department.

4 So, the set of visa applications that we had
5 provided to the defendant, provides the universe of workers
6 that we are looking at, but the indictment, addresses a
7 narrower timeframe than the entire timeframe that would be
8 covered by the visa applications themselves.

9 THE COURT: So, am I hearing the Government to say,
10 that you are limiting yourself to those workers who were part
11 or involved in this conspiracy, I suppose as victims, between
12 January 2010, and November 2016?

13 MR. RICHARDSON: Yes. I think that there are
14 important qualifications, limitations there. Certainly-- I
15 think it is unique to each charge.

16 For example, if we look at the forced labor charge,
17 Count Two, the substantive charge, that charges the defendant,
18 provided and obtained labor and services of one or more
19 persons by means specified in the indictment.

20 Also charges the defendant benefited financially by
21 receiving one or more things of value by participating in a
22 venture that engaged in such acts.

23 From the Government's perspective, proof of the
24 participation in a venture that engaged in such acts is going
25 to involve evidence outside of the time period. Because it

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1 would go to what that venture was engaged in.

2 So, when we talk about victims here, I think that
3 entire-- that broader subset, that covers a broader timeframe,
4 those are victims, and depending on the charge in the
5 indictment, they maybe victim of one charge and perhaps not
6 another, because of the differences in the charges.

7 THE COURT: Would it be too much to ask the
8 Government to give me a finite number of victims that are
9 involved here, that you intend to prove a case on, or with
10 respect to at trial?

11 So, for example, I have had a number of health care
12 fraud cases, where some have gone to trial, some have not.
13 Involving-- in one particular case, just that I recently
14 tried, thousands of patients. Because of the long period of
15 time that the offending doctor was engaged. Not only in the
16 practice of medicine, but in the fraud. Okay.

17 The Government did not intend to prove their case as
18 to each and every patient. So, they narrowed it to a subset
19 of patients, I forgot the exact number. But, whatever the
20 subset of patients was, to try to prove the fraud. Okay.

21 Needless to say, at that point, given the case law,
22 I did direct that the Government produce in a bill of
23 particulars, specifically, which patients the Government was
24 talking about, because of the large subset.

25 The exhibit listing the amount of the different

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1 patients and procedures was a compact disc of just hundreds of
2 pages.

3 So the question here is, there are two questions.
4 One is, okay, how many victims are you talking about
5 generally, so it sounds like you are talking about generally
6 about three hundred.

7 But, of that three hundred, are you looking to
8 extrapolate a smaller number to prove the charges at trial.
9 Because if that is the case, then that presents the issue that
10 I think the defense is concerned about, and that the Court is
11 concerned about, which is the double jeopardy issue. How do
12 they know that the Government won't come after him for some
13 other individuals that was not the actual subject of the
14 trial, at some later date.

15 I mean there maybe a statute of limitations problem
16 at that point. But that aside, I think there is a real
17 concern, unless the Government intends to prove all three
18 hundred. I don't know. I am not here to tell you how to
19 prove your case.

20 But, I do think that it is a fair question as to
21 what number of victims are actually going to be the subject of
22 the Government's proof at the trial.

23 MR. RICHARDSON: Understood, Your Honor. I think on
24 that point, you noted at the beginning here, that this issue
25 is interrelated with the Government's motion for protective

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1 order. So I--

2 THE COURT: I can tell you right now, that your
3 application to wait to disclose this, until the 300 material
4 is disclosed, what, two weeks before trial? That is not going
5 to happen. Because two weeks before trial, there is no way
6 that we can have any expedited motion practice. This is not
7 the only case that I have.

8 MR. RICHARDSON: I understand, Your Honor.

9 To address--

10 THE COURT: That is rather late in the game to be
11 deciding whether or not evidence should be suppressed.

12 MR. RICHARDSON: Well, to address the first ex parte
13 motion that the Government made, and the order that the Court
14 issued. The Court set a schedule for the production of
15 certain information to the defendant, that relates directly to
16 this victim issue.

17 And that--

18 THE COURT: Which is I think in July?

19 MR. RICHARDSON: So that required the Government to
20 disclose certain information relating to victims, 120 days
21 before the trial.

22 And, it is our expectation, that--

23 THE COURT: 120 days before trial, would be
24 approximately four months before trial.

25 MR. RICHARDSON: Correct, Your Honor.

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1 So, it is the Government's expectation, the
2 disclosures that we will make, 120 days before the trial, will
3 provide this evidentiary detail that the defendant is asking
4 for in relation to the victims.

5 I would note Your Honor, one of the cases that the
6 defendant cited--

7 THE COURT: Then I don't understand, what is it?
8 Are you looking at that disclosure as your 3500
9 material? When do you propose to make disclosures of 3500
10 material?

11 MR. RICHARDSON: Well --

12 THE COURT: Then I am not understanding the position
13 that you are taking, that this information should be disclosed
14 at the same time as the 3500 material, unless I am
15 misunderstanding your position. Maybe I am misunderstanding
16 your position.

17 MR. PRAVDA: Your Honor, if I can address that. I
18 think we are talking about --

19 THE COURT: Mr. Solomon, you can come up.

20 Just let Mr. Solomon get settled and put his
21 appearance on the record.

22 MR. SOLOMON: Alex Solomon for the Government.

23 THE COURT: I'm sorry. Go ahead.

24 MR. PRAVDA: Your Honor, if I can clarify. I think
25 there are two different categories of information that we are

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1 talking about here.

2 One category of information which is what Mr.
3 Richardson was just addressing, was the information with
4 respect to the identities of the victim. That is something
5 that we-- the Court already ordered in the ex parte order that
6 the Government would disclose 120 days before the trial.

7 THE COURT: Okay.

8 MR. PRAVDA: The second category, that is the
9 subject of the more recent ex parte motion, for a protective
10 order. It is as to that category that the Government would be
11 proposing to disclose at the same time as the 3500 material.

12 So two separate categories of information that we
13 are talking about.

14 THE COURT: So, is it the Government's position that
15 the disclosure that will come 120 days prior to trial relates
16 to the bill of particulars request that is made now?

17 MR. RICHARDSON: I believe it will provide the
18 information that the defendant is asking for in the bill of
19 particulars, Your Honor.

20 THE COURT: That is different from getting
21 disclosure at the same time as the 3500 material. That still
22 leaves four months to do a briefing.

23 I would like some-- I also would like a little bit
24 of clarification from the defense as to what the basis of the
25 Franks motion would be, if there is a Franks motion. Because

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1 in looking at Franks versus Delaware, which is at 438 U.S.
2 154, 1978, the Supreme Court held that where-- I'm reading
3 directly from the opinion from 155 to 156.

4 Where the defendant makes a substantial preliminary
5 showing that a false statement knowingly and intentionally or
6 with reckless disregard for the truth, was included by the
7 affiant in the warrant affidavit, and that the allegedly false
8 statement is necessary to the finding of probable cause, the
9 Fourth Amendment requires that a hearing be held at the
10 defendant's request.

11 I -- that is in part, they go on to other things.

12 So I'm trying to wrap my head around, what exactly
13 would be the basis of the defendant's motion.

14 MR. CLEARY: Franks motion, correct.

15 THE COURT: Yes, the Franks motion.

16 MR. CLEARY: So, if we were-- you remember this is
17 an issue we have taken up already with the Court. There is
18 the affidavit is redacted in large portion.

19 THE COURT: Forget the redaction. Okay. Let's talk
20 about where you are going with this. Because presumably, and
21 I have not seen the un-redacted search warrant, okay.
22 Presumably the agents did an investigation and got some
23 information, presented it to a court, that found probable
24 cause for the issuance of the search warrant. That is a
25 pretty tough hurdle to go over.

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1 MR. CLEARY: I understand Your Honor.

2 Our argument would be, if we had access--

3 THE COURT: And the other thing is, the point is, I
4 don't know what having the identity of the victims has to do
5 with the Franks motion.

6 MR. CLEARY: I was not connecting the two, Your
7 Honor. I have two different applications.

8 THE COURT: Okay. That is--

9 MR. CLEARY: If I misled the Court, I didn't mean to
10 do that. I have two separate issues in my mind.

11 THE COURT: Okay.

12 MR. CLEARY: I can get to the Franks in a moment.
13 You may not need to hear from me on that now that I stated my
14 position as to the two different issues.

15 But, as to the bill of particulars and the
16 identification of the victims, I don't believe the Government
17 has answered the Court's fundamental question, which is, how
18 many of these three hundred or so workers--

19 THE COURT: Go back to that in a minute. My brain
20 jumped to Franks.

21 MR. CLEARY: Do you want me to do that?

22 THE COURT: Yes. Humor me if you will.

23 MR. CLEARY: On Franks, what we would look to do is
24 to point to the affidavit, representations made in the
25 affidavit that are incorrect, and then to assess whether-- you

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1 know the standard better than I do, then assess whether
2 redacting those or excising those representations out of the
3 affidavit, is what is left in the affidavit, sufficient to
4 establish probable cause.

5 Now, we have already-- we can't make that showing,
6 for reasons we have talked about last time. I am happy to
7 refresh the Court on that.

8 But, equally important is, we have already
9 identified some, we believe, significant representations in
10 the portions of the affidavits we have seen, that we believe
11 are incorrect statements by the agent.

12 THE COURT: Like?

13 MR. CLEARY: Can I do this ex parte, Your Honor? I
14 don't believe the Government is entitled to hear from me at
15 this point about misrepresentations that I found, particularly
16 given the agent maybe a witness at the trial.

17 I am happy to disclose it to the Court.

18 THE COURT: If I order a hearing, the witness will
19 have to address it at the hearing anyway.

20 Is this a case agent that we are talking about? The
21 agent on the search warrant? Is that a different person?

22 MR. PRAVDA: It is a different agent, Your Honor.

23 MR. CLEARY: Could I appear ex parte, Your Honor?

24 If you rule against me, I hope you don't, I hope you
25 rule for me. If you were to rule against me, I would then

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1 have made a disclosure that would compromise my position at
2 the trial. The position of surprise at trial.

3 Again, I don't see how the Government is entitled to
4 this information at this point.

5 THE COURT: All right. I will tell you what, I will
6 let you make a written submission.

7 MR. CLEARY: Thank you.

8 THE COURT: Ex parte.

9 MR. CLEARY: Thank you.

10 THE COURT: Maybe in a week you will do that?

11 MR. CLEARY: Certainly, Your Honor.

12 THE COURT: So we will say-- I like to give lawyers
13 definite dates, it is easier to plan that way. By
14 November 1st, that will be a week.

15 MR. CLEARY: Thank you.

16 THE COURT: So let's go back then, we will leave
17 Franks for now. Let's go back to the --

18 MR. PRAVDA: Your Honor, if I just, to follow up on
19 that point before we leave the subject of Franks.

20 My understanding of the case law, is that in order
21 to be entitled to a Franks hearing, a defendant is required to
22 make a preliminary showing that would entitle them to the
23 hearing. I'm not sure I understand, I've never seen any case
24 law that suggests that that kind of showing could be made in
25 an ex parte basis. Because the Government has a right to

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1 respond and say--

2 THE COURT: He has not made the motion yet.

3 MR. CLEARY: Correct.

4 THE COURT: This is a multitiered issue. All right.
5 Because we are not at Franks yet. In order for the Court to
6 make any kind of Franks decision, as to whether or not a
7 hearing is warranted or is not warranted.

8 The argument that is being made now is with respect
9 to the unsealing of the entire search warrant affidavit.
10 Because the defense is contending that without being able to
11 see the entire affidavit, they are hamstrung. Their hands are
12 tied, because they are not able to ascertain whether in fact
13 they even have a viable Franks motion.

14 It may be that they decide that there is not a
15 viable Franks motion. I think that has been discussed at some
16 other prior conferences.

17 MR. CLEARY: It has.

18 THE COURT: That we have had here.

19 So, we are not at the level of-- it is not my
20 intention to use any ex parte submission by counsel to make a
21 decision, as to whether or not there should be a Franks
22 hearing. Because I agree with you, that the Government is
23 entitled to respond. That is not what we are talking about
24 here.

25 In the same way that the Government has made a

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1 motion ex parte for withholding the information, as I
2 understand it, this is more in the nature of a disclosure of a
3 defense.

4 MR. CLEARY: Correct, Your Honor.

5 THE COURT: And that is why the defense is concerned
6 about disclosing it.

7 If it should turn out that I feel that it is
8 something that should be disclosed to the Government, the
9 defense will be given an opportunity to either withdraw the ex
10 parte submission or to allow it to be shown to the Government.
11 That will be the two choices that they can make.

12 I mean after all, courts do this all the time.
13 Differentiate between admissible and what is not admissible
14 and come to some sort of a ruling. We do it at hearings, we
15 do it all the time. Right.

16 So, did I state that accurately, that this is where
17 you are going with that?

18 MR. CLEARY: You stated the defense's position
19 accurately, Your Honor.

20 THE COURT: So I don't think you need to be worried
21 about that, because we are not even at the briefing stage yet
22 for the Franks motion.

23 And it may be that once I receive the defense's
24 submission, because I have not yet seen an un-redacted search
25 warrant, and I am going to ask the Government, unless I missed

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1 it in some submission that you gave, there has been a lot of
2 paper already--

3 MR. PRAVDA: Your Honor, we will provide you --

4 THE COURT: If I misstated it.

5 MR. PRAVDA: We will provide you with another copy.

6 It was attached to the March 2016 ex parte application,
7 because what happened was, we submitted a version and asked
8 the Court to authorize the specific redactions that were
9 contained in that affidavit.

10 I'm sorry, March 2017.

11 THE COURT: March when?

12 MR. PRAVDA: March 2017.

13 THE COURT: March 20th?

14 MR. PRAVDA: But we are happy to provide another
15 copy.

16 THE COURT: Is the March 20th, that you said?

17 MR. PRAVDA: It was March 6th, 2017.

18 THE COURT: March 6th, I'm sorry.

19 Just hold on a second.

20 (Pause.)

21 THE COURT: You know which exhibit it is, that
22 submission-- besides being lengthy, had a lot of exhibits.

23 MR. PRAVDA: That is correct, Your Honor. I believe
24 it is on--

25 THE COURT: How long is the search warrant

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1 affidavit?

2 MR. CLEARY: 38 pages.

3 MR. PRAVDA: Exhibit A1.

4 THE COURT: I have that.

5 MR. PRAVDA: And this Your Honor, Exhibit A2, is the
6 same affidavit in redacted form. So that Your Honor can
7 compare and see what was redacted.

8 THE COURT: Okay. So I can look at that again.

9 Let me look at that. It has just been awhile since
10 I looked at that. I had a trial right after that, with
11 thousands of pages of medical, Medicare fraud issues.

12 So, let me refresh my memory with that and I will
13 have the back drop of the defense's submission, which I think
14 would be helpful for the Court to make that decision.

15 Because I am wondering whether there might not be
16 some way-- I'm trying to find a way to reach some
17 accommodation that satisfies the Government's concerns and
18 also satisfies the needs of the defendant.

19 I am hopeful that maybe there is some happy medium,
20 somewhere in between there.

21 MR. CLEARY: Your Honor had made--

22 THE COURT: The Government in connection with the
23 protection of the victim's names, the Government has just
24 expressed some sort of a generalized concern, and I think part
25 of that concern was that it alleges that the defense had been

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1 approaching certain potential witnesses or victims in the
2 case, and asking whether or not they are cooperating with the
3 Government. And the Government is concerned of retribution,
4 back in the Peoples Republic of China.

5 And I guess my question is, whether-- where do those
6 concerns come from, have there been any expressions of such
7 concern by any potential witnesses from the Government?

8 MR. PRAVDA: Your Honor, if the Court wishes, that
9 is something the Government can address in an ex parte letter
10 as well.

11 THE COURT: I am sort of loathe to have multiple ex
12 parte submissions. The Government already submitted one and
13 the problem is, that you speak in generalities.

14 MR. PRAVDA: I think that we can--

15 THE COURT: I'm also not-- I have a concern that if
16 the defense is-- does get the names of victims, that they do--
17 that there might possibly be some feeling on their behalf,
18 whether intentional or not, or intentional on the part of the
19 defense team, where they might feel threatened in some way.
20 Because I have seen that happen in other cases. Sometimes
21 un-intentioned. Unintended, an unintended consequence of the
22 approach. A lot depends on what the approach is.

23 And the mere fact that a witness or potential
24 witness or a victim might say, I'm not cooperating with the
25 Government, doesn't necessarily mean that if agents spoke to

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1 that person and got statements from that person, and the agent
2 uses that information to obtain a search warrant, for example,
3 that the mere fact that the individual says that they are not
4 cooperating, means the agent is lying.

5 Because statements can be obtained by agents and it
6 happens all the time during investigations, as they go along,
7 of potential witnesses who are not necessarily cooperating, as
8 we understand that term, with the Government, but nonetheless,
9 they obtain information that leads to other things.

10 So, that is why I am asking this, because in looking
11 at the defense papers, I have this concern that there is a
12 belief that if the agent said, I spoke to Jane Doe and Jane
13 Doe said X, Y, and Z, that the defense is assuming that that
14 person automatically is a cooperator. The defense speaks to
15 Jane Doe and she says I'm not a cooperator. I'm not
16 cooperating with the Government. The person may have been
17 interviewed. Doesn't necessarily-- they are not mutually
18 exclusive.

19 MR. CLEARY: I agree with that, Your Honor.

20 THE COURT: That is why I am trying to wrap my head
21 around this.

22 MR. CLEARY: Your Honor, on the-- redacted
23 affidavit, you were saying, I appreciate this, trying to reach
24 accommodation that works for both sides. You had actually--
25 you were the only one when we appeared last time that came up

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1 with a solution that I think works for both sides, certainly
2 our side.

3 You had suggested that the affidavit be un-redacted,
4 for counsel's eyes only and we had after court, broached that
5 subject with the Government, and they ultimately rejected it.

6 But, I think that is something that would work and
7 Your Honor, it should work. We are officers of the Court. We
8 were both prosecutors for many decades in my case, we have
9 been members of the defense bar for many many years. We
10 should be entitled to that information-- we are entitled to
11 the information and the Government should not have concerns
12 that we are going to do anything improper.

13 THE COURT: Why wouldn't that work?

14 MR. PRAVDA: Your Honor, in this instance, the
15 defendant's company has demonstrated a history of retribution
16 against people who have cooperated. That there are specific
17 examples of that in the Complaint, in the public complaint.

18 We can provide the Court, if Your Honor wishes with
19 additional specifics.

20 The concern with the proposal that Mr. Cleary just
21 gave, is that obviously defense counsel is going to use this
22 information for purposes of the defense, and in so doing, will
23 reveal to their client, who these people are. And the
24 client's company may well act in accordance with this history
25 of retribution.

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1 MR. CLEARY: That is easy to solve. I don't
2 represent the company. If the Court would tell me, it would
3 be perfectly appropriate. The Court tells me, I get the
4 information, I'm entitled to, counsel's eyes only, meaning us,
5 and not to share it with the company or company counsel, that
6 is satisfactory.

7 THE COURT: Or with the defendant.

8 MR. CLEARY: I'm fine with that too, Your Honor.

9 THE COURT: So then if-- I mean, this is a legal
10 decision that the lawyers have to make as to whether or not
11 there is a viable motion to make. I don't think Mr. Zhong is
12 an attorney, I don't think that is among the representations
13 made to the Court.

14 MR. CLEARY: Correct.

15 THE COURT: And, in particular since-- as an initial
16 matter, the review would be necessary for the defense to even
17 determine whether or not we are spinning our wheels here. It
18 may be that at the end of the day, a Franks motion isn't going
19 to be necessary.

20 MR. PRAVDA: Your Honor, just to be clear, it is not
21 at all clear to the Government that the statements that Mr.
22 Cleary is suggesting maybe in the affidavit, even relate to
23 the issues that we are talking about right now.

24 So, he said himself, that the Franks motion and the
25 identity of the victims are two separate issues.

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1 So when you are talking about--

2 THE COURT: Except to the extent as I understood it,
3 the agent may have been informed as to certain facts by
4 certain individuals, correct?

5 MR. CLEARY: That is not my argument on the Franks
6 being redacted affidavit and Franks, Your Honor.

7 THE COURT: Okay.

8 MR. CLEARY: I don't know what the source of the
9 information is for the agent. I am treating these in my mind,
10 and in terms of our application, these are two completely
11 different issues.

12 THE COURT: Okay.

13 MR. CLEARY: So let's leave the--

14 THE COURT: So, the question is, because this is
15 part of the problem, I think, things are being conflated here.
16 We are talking about the Franks application, which is
17 dependent on the defense-- this is their argument, being able
18 to see the un-redacted affidavit of the agent, for the search
19 warrant itself.

20 And, if it would be for counsel's eyes only, without
21 disclosure to the defendant's companies or the defendant, for
22 their determination on the motion that they are going to make,
23 and if a portion of the motion has to be made under seal
24 because to the extent that a portion of the motion would
25 relate to what has been redacted by the Government, that would

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1 be one way to deal with that.

2 And I have done motions in both civil cases, and in
3 criminal cases where there was sensitive-- for example, in a
4 terrorism case, where there is sensitive information and what
5 was done was that there were two separate documents that were
6 made. The public documents with the documents that could be
7 made publicly, and a sealed document with arguments that
8 needed to be made addressing sensitive information. In fact
9 as I am recalling it, it has been some years now.

10 As I recall it, in that particular case, it did
11 involve sensitivity concerning safety of witnesses.

12 So, that might be an accommodation that could be
13 made to allay whatever concerns the Government has, that
14 perhaps, what the disclosure would translate to, would be a
15 motion that is made, that is filed on the public docket, that
16 the defendant and/or his company would be able to access some
17 way or another, and then perhaps act in an untoward way on
18 that information.

19 MR. PRAVDA: Your Honor, the Government objects to
20 that approach.

21 There is particular information that is referenced
22 in the ex parte submission that obviously I can't discuss here
23 in open court, that is very sensitive to the Government.
24 There is significant concerns that the Government has with
25 even just defense counsel seeing that information. Between

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1 the ex parte letter, I can point Your Honor to it. But I
2 can't speak specifically to what that fact is.

3 I can say it is on page two of the ex parte letter.
4 It is the last paragraph, before the section on the law. The
5 September 15th, 2017, ex parte submission, in the second full
6 paragraph.

7 THE COURT: I'm sorry, which page?

8 MR. PRAVDA: The second page, the second full
9 paragraph, right before the legal section.

10 THE COURT: I'm sorry, are you talking about--

11 MR. PRAVDA: Your Honor, if I may. It is the
12 September 15th, 2017.

13 THE COURT: I have the September 15th document in
14 front of me.

15 MR. PRAVDA: There were two letters filed on
16 September 15th, by the Government. One was a public letter
17 and the other one is the ex parte letter.

18 If you would like, Your Honor, I can hand up my copy
19 to you. I --

20 THE COURT: I have it.

21 I recall reading this, and still wondering why
22 attorney's eyes only review would not be appropriate. It
23 seems to me that you are assuming that the defense counsel is
24 going to disclose even in the event that the Court directs
25 counsel not to disclose either to the defendant's company or

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1 companies, whatever businesses he has, any business he has, or
2 to the defendant or to anyone related to the defendant.

3 This would be a discussion that the two attorneys
4 have or three attorneys have, sitting quietly back there.

5 One day we are going to let her argue a motion,
6 right?

7 I am troubled by that. Because there is nothing
8 that I have seen in the letters, submission that you just drew
9 the Court's attention to, that would implicate defense
10 counsel.

11 MR. PRAVDA: Well, Your Honor, quite simply, defense
12 counsel could act on that information simply by doing
13 something like interviewing the person or persons that are
14 referenced in that paragraph. That would undermine and raise
15 exactly the concerns that the Government has articulated in
16 that paragraph.

17 THE COURT: I will tell you what we are going to do,
18 we are going to proceed as I had originally planned. I am
19 going to get the ex parte submission from defense counsel by
20 November 1st. And I am going to review, again, the
21 un-redacted search warrant against the redactions that have
22 been made. I will have the benefit of defendant's submission.

23 If the Government has any additional information
24 concerning its safety concerns, concerning any witnesses at
25 all, then you need to submit that to the Court, ex parte by

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1 November 1st as well.

2 I want to have all of that information together. I
3 think you really need to think about, seriously, about the
4 eyes only alternative, and to the extent that the Government
5 in any event, as I understand our discussion today, is going
6 to be disclosing identity of victims, 120 days out, I assume
7 that all of these people's names are going to be out to the
8 defense. Yes?

9 MR. RICHARDSON: That's correct, Your Honor.

10 THE COURT: Okay.

11 Then I could to allay some concerns, just prohibit
12 the defense from actually speaking to those individuals until
13 the 120 days, when you get the disclosure, the full
14 disclosure. That still would provide four months out to do
15 any further investigation or whatever.

16 I mean the witnesses may want to talk to you, they
17 may not want to. That is their prerogative. But the defense
18 is entitled to do its own investigation as well.

19 But I need to have something more than some general
20 concern. I would like to know what the Government is doing to
21 protect these people, because that is not clear to me either
22 from this submission.

23 So, just to make sure that we covered everything, so
24 with respect to-- with respect to the 250-- ultimately there
25 will be three hundred workers that are the subject here, those

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1 identities are going to be disclosed and given 250 have
2 already been turned over, as far as visa applications are
3 concerned.

4 I still have not heard from the Government going
5 back to the point you were going to make, whether there is
6 going to be a subset of those, that the Government is going to
7 present at trial.

8 MR. PRAVDA: Your Honor, I think that just from a
9 practical consideration, it is likely that the Government will
10 do some subset. We have not made the determination at this
11 point of who those individuals might be.

12 I would also just note for the Court, that because
13 there are different charges against the defendant. Example, a
14 forced labor charge, there is a visa fraud charge. Some of
15 those--

16 THE COURT: Okay. What is going to wind up
17 happening, I can tell you this now, is I'm going to give you a
18 deadline for you to decide what subsets, okay, are the
19 Government is going to prove at trial.

20 And you can have a subset based on charge one,
21 another subset based on charge two, and another subset based
22 on charge three. I'm not going to direct you to disclose that
23 now, but you are going to start thinking about that now,
24 because at some point, we are going to set a trial date here,
25 and we are going to move backwards from that.

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1 So that realistically, a lot of this mountain of
2 paper, the defense can prepare for trial.

3 MR. CLEARY: Part of that --

4 THE COURT: But, you can't wait until the eve of
5 trial to start whittling down the names, okay. Because I have
6 had that happen to in these types of cases. Similar types of
7 cases. I have not done a forced labor case.

8 But, in cases involving this numerosity, okay, that
9 is the basic issue. You have this large number that you are
10 dealing with. And realistically, you have to whittle it down
11 to what you feel you need to prove your case beyond a
12 reasonable doubt.

13 I'm not going to tell you, it is going to be one,
14 two, three. You are going to make whatever decision that is
15 on your own, but it will be, if there are different people for
16 different counts, then you group it by count. I don't see
17 what is so difficult about that. I feel like the Government
18 is making this a lot more difficult than it needs to be.

19 I suggest that you start thinking a little bit more
20 creatively in a way that everyone's needs can be accomplished
21 here. Because I do think that there is a way, and you are not
22 going to like it if I make that decision for you, so you might
23 as well work together to make that decision among yourselves.
24 It is your case to try. It is their case to defend. I am
25 here to just make sure that everybody follows the rules.

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1 Okay.

2 MR. PRAVDA: Understood.

3 THE COURT: Is there aside from the needing names we
4 were talking about, is there any other outstanding discovery
5 issues here?

6 MR. PRAVDA: Your Honor, I am happy to address where
7 we are.

8 THE COURT: There was an update on-- from Ms.
9 Macconiaverna, I think, right? You filed something this week,
10 I think.

11 MR. MACCONIAVERNA: Yes, Your Honor, I did make a-- a
12 Rule 16 production of E-mails sent to or received by the
13 defendant's E-mail address, that I recently discovered while I
14 was reviewing documents in the filter team data.

15 THE COURT: Anything else from the Government's
16 perspective?

17 MR. PRAVDA: If Your Honor wants me to address where
18 we are, I am happy to do that.

19 THE COURT: Yes, please.

20 MR. PRAVDA: So, Your Honor, the last status
21 conference, Ms. Macconiaverna updated the Court that she
22 anticipated the filter team would be turning over to the
23 prosecution team, all E-mails by November 10th and all other
24 electronically stored information by December 8th.

25 I understand that we're still roughly on target to

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1 meet those deadlines. It may be off by a week or so. So it
2 would be like November 17th, December 15th.

3 What we have found so far, Your Honor, this is
4 taking approximately thirty days, give or take, for the-- once
5 the Government receives the material, from filter review team
6 to review for relevance and then turn over to defense counsel.

7 So on that timeline, assuming that everything is
8 done by December 15th, we would then complete the English
9 language discovery production by mid January.

10 The one category that I omitted from that summary,
11 Your Honor, is the foreign language documents. There are
12 pretty substantial volumes of foreign language documents.
13 What we have seen so far is something like five percent of the
14 total number of documents are in Mandarin or Chinese or some
15 other language. We are working with F.B.I. linguists, both at
16 filter team level and at the prosecution team level, to work
17 our way through that set of documents.

18 Right now, I am not in a position to say exactly
19 when that will be complete. It will be at some point after
20 mid January, I would hope, mid February.

21 But, I think we have to see-- we have a very large
22 team of people working on this. I think we need to get a
23 better sense of how long the translation process is taking,
24 before we can commit to being able to tell the Court exactly
25 when the production of those materials will be complete.

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1 THE COURT: Anything that you all want to raise on
2 your end?

3 MR. CLEARY: I do, Your Honor.

4 I have a number of issues and questions which I will
5 pose to the Court. But they are really for the Government.

6 Following on the representations that they made on
7 discovery, when we were here in early September,
8 September 6th.

9 In the September 6th conference, the Government
10 said, that the review would be completed in about two months
11 and that the prosecution team would produce materials they
12 received from the taint team, on a rolling basis, almost
13 immediately. Those are the words that they used at page 7,
14 line 24; page 8, line 3.

15 That has not happened, Judge. The Government has
16 not given us anything in almost two full months since
17 August 30th.

18 Now, there is a disc they sent over which we have
19 not seen yet. It didn't arrive at our office before we left
20 for court. Apparently there is a production. I don't know
21 what is on that. But, they did not produce almost immediately
22 on a rolling basis that information.

23 So what I want to know is, what is the status of
24 that review that they told the Court about, on September 6th,
25 when are we going to receive it and volume and language. If

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1 it is Chinese, that is a different matter for us than if it is
2 English.

3 I have several other issues to, Your Honor, related
4 to representations made on September 6th. I can go through
5 each now or if you want me to wait and do one by one, I will
6 do it that way.

7 THE COURT: Let's take that first.

8 MR. PRAVDA: Your Honor, the representations that
9 Ms. Macniaverna made about where filter team review was in
10 the process, in that September 6th conference is exactly what
11 I just told the Court. November 10th, and December 8th. And
12 I have just advised the Court that filter team as I understand
13 it, is roughly on target to meet those deadlines. Right now
14 they might slip by a week. We are--

15 THE COURT: What the Government represented was that
16 it was going to make production on a rolling basis, not okay,
17 we are going to accumulate everything by a date certain and
18 then produce everything.

19 MR. CLEARY: They said almost immediately, Your
20 Honor.

21 THE COURT: Yes, I remember that.

22 MR. PRAVDA: Yes, we received the first pass of
23 25,000 documents over the wall from filter team. We reviewed
24 that, that culminated in the disc we produced yesterday. That
25 is the English language material that is all of the relevant

1 documents out of those 25,000 documents.

2 The filter team is continuing to provide the
3 Government team, the prosecution team on a rolling basis those
4 materials--

5 THE COURT: What is your definition of a rolling
6 basis?

7 MR. PRAVDA: As they are reviewed and deemed to be
8 non privileged, they are being passed over the wall. As I
9 mentioned, it takes about thirty days for the relevance review
10 given the volume. Talking about maybe 250,000 documents.

11 So, reviewed a number of documents that were passed
12 over, we tried to put them into the production cue and made a
13 production. It is not the case that when I give the mid
14 January deadline, that means that there wouldn't be another
15 production until mid January. We are going periodically
16 between now and then, to make production of the material that
17 the prosecution team has been able to-- has received from
18 filter team, has conducted the relevance review on and has
19 determined to be relevant and discoverable.

20 MR. CLEARY: They said that last time. They have
21 not done that.

22 Almost immediately reference, was not documents
23 going over the wall to the prosecution team. It was the
24 prosecution team producing those materials to us. That just
25 never happened.

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1 MR. PRAVDA: Your Honor, there is still a
2 substantial relevance review that has to be done. It is not
3 the case--

4 THE COURT: Perhaps you should use your words more
5 carefully, because it is not immediate production.

6 In other words, when the taint team gets done
7 reviewing, you are not just automatically taking what you get
8 from the taint team and turning it over to the defense. You
9 are then engaging in an additional review after that, correct?

10 MR. PRAVDA: That's correct.

11 THE COURT: The immediacy is gone.

12 For now, I'm going to let the Government proceed as
13 it is doing because perhaps you don't want to be bombarded
14 with millions of documents that a good portion of which are
15 not relevant, necessarily to the case.

16 But then, that doesn't mean that, you know, the
17 Court won't revisit this, if I feel that it is not being
18 turned over as diligently as it should be.

19 MR. CLEARY: I have a few other issues.

20 MR. PRAVDA: I was just saying, understood. We are
21 working diligently.

22 THE COURT: All right.

23 MR. CLEARY: I have a few other issues as to a
24 follow onto the September 6th conference.

25 The Court was told on September 6th, that the taint

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1 team's review of what they characterized as hard copy
2 published materials, that that taint team's review was
3 completed and that that information was given to the
4 prosecution that same day, September 6th.

5 This is on page 8, line 25 to page 9, line 2.

6 That information has never been produced to us. We
7 know that, because they hadn't produced any information to us,
8 from August 30th, until this disc, which we still have not
9 received. We are led to believe that that disc has just
10 electronic information on it, not hard copy.

11 So, I want to know what that information-- the same
12 questions, Judge, what that information is, why we have not
13 received it yet, since the prosecution team has had it for
14 however many weeks it has been since September 6th. What is
15 the volume of it, when will we receive it and what language is
16 it in?

17 MR. PRAVDA: Your Honor, the hard copy document
18 consisted of approximately twenty documents. None of which
19 were deemed to be relevant.

20 THE COURT: Okay. Well, it might be helpful if
21 something like that was memorialized. You don't have to file
22 it with the Court. Trust me, I don't want to be receiving all
23 the discovery letters that go back and forth among counsel.

24 But, it might be helpful to follow up and say, of
25 the hard copies that were discussed at the September 6th

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1 conference, it has been reviewed and not deemed relevant.
2 Then this way, it obviates the need for addressing it at a
3 conference like this.

4 MR. CLEARY: That would be very helpful.

5 THE COURT: So, not left hanging.

6 MR. CLEARY: That would be very helpful. But I
7 would also ask the Court to direct the Government to respond
8 promptly to our requests.

9 This has been a huge problem with discovery
10 throughout this case. I don't want to belabor the record, I
11 don't want to burden the Court with this. I will give you one
12 or two examples and only one or two examples of which there
13 are many.

14 On June 2nd, we made our request for a bill of
15 particulars. The Government did not respond in writing to our
16 request for a bill of particulars for eleven weeks. As you
17 well know, we could not bring a motion, we could not go out,
18 if we had a motion to bring until after they responded in
19 writing.

20 Their response, as you know, is what I believe is
21 the standard response from the U.S. Attorneys' office.
22 Evidentiary, we don't have to produce it.

23 Eleven weeks, almost three months to do that, and
24 that is why, from June 2nd, until October 25th, it has taken
25 that long to resolve the bill of particulars issue. That is

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1 just one example.

2 Another very recent example, I will stop with the
3 examples, is on September 22nd. We wrote a detailed discovery
4 letter to the Government, trying to resolve the issues, I have
5 alluded to several times. Trying to resolve without burdening
6 the Court. They did not respond to that letter until
7 yesterday.

8 So over a month, and when they responded he only
9 addressed a couple of the issues and said they will respond to
10 the rest later. That is another month of time.

11 THE COURT: I have got a response for this. Okay.
12 If a request is made, from either side, what is good for the
13 goose is good for the gander. The parties-- the opposing
14 party has fourteen days to respond. Even if it means, that
15 response is, well, we need more time because. But not to just
16 sit there, and leave the request hanging.

17 Unfortunately, I see lawyers do this a lot, motions
18 are made, requests are made, and there is no direct response
19 that is made. Unless there is a directive by the Court and
20 that is wasteful.

21 So, we will just use the federal rules, fourteen day
22 time period and respond in whatever the appropriate response
23 is. This way matters do not remain unaddressed.

24 MR. CLEARY: That will be helpful, Your Honor.

25 THE COURT: This way, also, like I said, I don't

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1 necessarily need to have these things piled on the docket
2 unless court action is necessary.

3 I am hoping that by having this kind of exchange,
4 that that will eliminate the need for court, for court action.

5 But at least then there is less of a chance of
6 misunderstanding, that will be a hindrance to moving the case
7 forward one way or another.

8 I have no doubt that both sides are working
9 diligently. This is a complicated case. It is made more
10 complicated by the fact because of the foreign language
11 documents and privileged documents that are involved. So it
12 is not easy. I trust that both sides are working diligently.

13 But, you have to work a little bit-- as I said, a
14 little bit more creatively and perhaps smarter to be able to
15 be more responsive and make a clearer record of what is
16 happening so that there is less misunderstanding going on.

17 MR. CLEARY: Thank you.

18 THE COURT: Is there something else?

19 MR. CLEARY: Two related issues again coming out of
20 the September 6th conference.

21 MR. PRAVDA: Before Mr. Cleary moves on, if I can
22 address that.

23 THE COURT: Yes.

24 MR. PRAVDA: The Government is happy to respond
25 within fourteen days. But I want the Court to understand that

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1 the defense has endeavored over the last several months to
2 drown the Government in paper.

3 There were requests made--

4 THE COURT: That is what large firms do.

5 MR. PRAVDA: And every time the Government has to
6 spend--

7 THE COURT: I understand. That is why I said, even
8 if the response is, you know what, we are working on it, this
9 is how much longer it is going to take.

10 MR. PRAVDA: Okay.

11 THE COURT: I understand that. This is what large
12 firms do.

13 MR. PRAVDA: That is fine.

14 THE COURT: That is to be expected.

15 MR. PRAVDA: Okay.

16 THE COURT: I get it.

17 But, it is more difficult to work with no response
18 at all. That is my point. Okay.

19 Second point or third point?

20 MR. CLEARY: I guess they are related.

21 Metadata, we had a discussion in the conference on
22 September 6th.

23 THE COURT: Yes.

24 MR. CLEARY: The Government said they would get the
25 metadata to us, and the Court had noted in that-- actually

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1 requested that information be provided in a searchable format.

2 THE COURT: Yes.

3 MR. CLEARY: I don't believe we received that yet.

4 In fact in the Government's letter, yesterday's letter, they

5 said that that information, the metadata that we have been

6 waiting for, for a long time now, would be produced shortly.

7 The same series of questions, I would like to know

8 what shortly means, when are we going to get the metadata.

9 THE COURT: When is that forthcoming?

10 MR. PRAVDA: Your Honor, I think that that is a

11 request for certain filter team production. So I will have

12 Ms. Macconiaverna address that.

13 MR. MACCONIAVERNA: Your Honor, as you maybe aware,

14 in an effort to provide the defendant with his own statements,

15 as expedient a manner as possible, filter team has made

16 productions.

17 THE COURT: The interpreter can't hear you.

18 MR. MACCONIAVERNA: In an effort to provide the

19 defendant with his own statements in as expedient manner as

20 possible, filter team has made productions of E-mails sent to

21 and from his E-mail account.

22 We made those productions in PDF form. I have

23 placed--

24 MR. CLEARY: Sorry.

25 THE COURT: PDF form.

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1 MS. MACCNI AVERNA: Yes. I have placed a request
2 with our technical person that I work with, to reproduce those
3 documents with metadata. I am confident that will be done by
4 the end of this week.

5 THE COURT: Okay.

6 MR. CLEARY: The related issue, and maybe I just got
7 an answer to it, which was, the foreign language documents.
8 Most of those are produced in PDF. So I am told we need them
9 in native format, with extracted text, so that we can search
10 them.

11 I would like to know whether that is happening as
12 well.

13 MR. PRAVDA: Your Honor, I'm not clear from Mr.
14 Cleary's question whether he is asking about foreign language
15 documents provided as part of filter review or as part of the
16 prosecution team review?

17 THE COURT: Which review are you talking about?

18 MR. CLEARY: The review that leads to documents
19 being produced to us. That is all I care about is whether--

20 THE COURT: I guess he is talking about the end
21 review by you.

22 MR. PRAVDA: Okay.

23 THE COURT: Whether by the trial team.

24 MR. PRAVDA: The only foreign language documents
25 that the prosecution team has produced, if they existed in

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1 electronic format they have been produced in electronic
2 format. If they exist in hard copy or some other kind of
3 format, that is the format they have been produced in, in PDF
4 format. If we don't have it in electronic format. We have
5 not provided it in electronic format.

6 MR. CLEARY: I think that answers my question.

7 THE COURT: I think that sounds like something that
8 maybe you should just discuss together.

9 Let's set a date, I have got another matter where
10 the parties have been waiting patiently.

11 It sounds like there is a lot of stuff that is going
12 on in November.

13 Do the parties want to meet in December?

14 MR. CLEARY: We would like to, Your Honor. Early
15 December if the Court is available.

16 THE COURT: I have time at noon, December 6th, if
17 that is good for the parties.

18 MR. CLEARY: It is for the defense.

19 MR. PRAVDA: Your Honor, the only concern on the
20 Government's end is that Ms. Macconiaverna is going to be away
21 for two weeks for Department of Justice training from
22 December 5th through December 14th. So to the extent she
23 should be present, she wouldn't be available on December 6th.

24 THE COURT: Are you the only person on the team?

25 MR. MACCONIAVERNA: I am the only person on the team

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1 from the office--

2 MR. PRAVDA: The only A.U.S.A..

3 MR. MACCNIERVERNA: I'm sorry, to clarify, actually
4 the training starts on the fourth of December.

5 THE COURT: For the whole week?

6 MR. MACCNIERVERNA: Yes, Your Honor.

7 THE COURT: What about the afternoon of December
8 11th.

9 MR. MACCNIERVERNA: It is a 2-week period. It is the
10 week of December 4th, through December 15th.

11 MR. PRAVDA: Your Honor, would December 1st work.

12 THE COURT: No.

13 MR. PRAVDA: The 18th?

14 THE COURT: I'm sorry.

15 COURTROOM DEPUTY: The week of the 18th.

16 THE COURT: I can put this on for Monday
17 December 18th.

18 MR. CLEARY: That is fine for the defense.

19 THE COURT: Is 10 o'clock in the morning okay for
20 everybody?

21 MR. CLEARY: That is fine.

22 MR. PRAVDA: Yes, Your Honor.

23 THE COURT: December 18th.

24 Does the defendant consent to the exclusion of time?

25 MR. CLEARY: We do, Your Honor.

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1 THE COURT: Time is excluded on consent and in the
2 interest of justice for the reasons stated on the record. And
3 the Court does have under advisement the motions with respect
4 to the protective order as well. Although I am hoping that I
5 will have a decision for you long before December 18th.

6 MR. CLEARY: Thank you, Your Honor.

7 I know we are keeping another party waiting, I
8 apologize. I have one thing to put on the record to apprise
9 the Court, there is no decision the Court has to make now.

10 THE COURT: Okay.

11 MR. CLEARY: We are going to, having now just heard
12 that discovery will continue through mid February, at least,
13 recognizing that that means, we will probably not be trying
14 the case until the summer, that is way longer than anyone ever
15 anticipated and I will be in light of that, filing a due
16 process bail motion.

17 Your Honor has dealt with risk of flight previously
18 at a time when everyone thought the case was going to be tried
19 in 2017. Indeed the Government had represented that in court,
20 that they would like to try it in 2017. That is obviously not
21 going to happen now. And we are going to miss that mark by a
22 wide margin. I don't need a decision from the Court, I wanted
23 to apprise the Court that will be coming.

24 THE COURT: You make the motion at the appropriate
25 time. I have a ten defendant case scheduled for trial in the

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1 summer. So anything can happen with that case in the interim,
2 but in all likelihood, we are probably looking at early fall.

3 MR. CLEARY: Thank you, that is helpful.

4 THE COURT: For a trial on this case.

5 All right. Thank you.

6 MR. CLEARY: Thank you very much.

7 THE COURT: Marshals, you may take charge.

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11 I CERTIFY that the foregoing
12 is a correct transcript from
13 the record of proceedings
14 in the above entitled matter.

15 s/Richard W. Barry

16 Richard W. Barry, RPR

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